

**AN ORDINANCE AMENDING THE
COUNTY OF SAN DIEGO TRANSPORTATION IMPACT FEE ORDINANCE**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that is necessary to amend the Transportation Impact Fee Ordinance, Division 7, Title 7, Sections 77.201-77.220 of the San Diego County Code of Regulatory Ordinances. The amended ordinance reflects changes to the road network included in the Mobility Element (ME) of the County's General Plan as adopted in August 2011. The primary intent of the ordinance is to create a fee program consistent with the Mitigation Fee Act, California Government Code §§ 66000 *et seq.*, that developers may elect to use to mitigate the cumulative impacts of their projects on ME roads in a cost-effective manner. The amended fee shall include a "built-in credit" to account for frontage and other improvements constructed by developers that reduce the need for the County's construction of ME road improvements. The TIF shall also include as a separate line item the Regional Transportation Congestion Improvement Program Impact Fee (RTCIP Impact Fee) as detailed by the San Diego Association of Governments in the RTCIP Impact Fee Nexus Report—Final Report dated November 26, 2007. It is the intent of the Board that collection of the RTCIP Impact Fee be included in the TIF so that the County may meet the requirements of Section 9 of the voter approved TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01, to have a funding plan to mitigate for the impacts of future development on Regional Arterial System (RAS) roads.

Section 2: The Transportation Impact Fee Ordinance, Division 7, Title 7, Sections 77.201-77.220, of the San Diego County Code of Regulatory Ordinances is hereby amended in its entirety as follows:

SEC. 77.201. TITLE.

This Division shall be known as the Transportation Impact Fee (TIF) Ordinance and may be cited as such.

SEC. 77.202. PURPOSE.

The purpose of this Division is to make provision for assessing and collecting fees in accordance with the Mitigation Fee Act, California Government Code §§ 66000 *et seq.*, as a condition of approval of a land development project or prior to issuance of a development permit, including a building permit, to defray the actual or estimated costs of constructing planned transportation facilities necessary to accommodate increased traffic generated by future development. Application of this fee will include, but is not limited to, development for residential, commercial and industrial land uses.

The fees collected pursuant to this Division are to fund identified transportation facilities, or portions thereof, that will mitigate for the cumulative impacts of future development on transportation facilities within the unincorporated county as identified in the Mobility Element (ME) of the General Plan. The transportation facilities for which these fees are collected are identified as "TIF Facilities" and include improvements to Mobility Element roads identified in the County's General Plan, Regional Arterial System (RAS) roads as identified by the San Diego Association of Governments and certain State

routes, ramps and interchanges. Development projects required to provide transportation improvements to mitigate for project direct impacts shall also be required to pay the TIF to mitigate for cumulative impacts.

The fees collected will include as a separate component the Regional Transportation Congestion Improvement Program Impact Fee (RTCIP Impact Fee) as detailed by the San Diego Association of Governments in the RTCIP Impact Fee Nexus Report—Final Report dated November 26, 2007. Consistent with the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01, credits may be applied to the RTCIP Impact Fee to account for RAS road construction by residential developers. No other portions of the TIF fee besides the RTCIP Impact Fee component shall be eligible for credits as the value of anticipated future road construction to be completed by developers is built into the program.

SEC. 77.203. FINDINGS.

With regard to the RTCIP Impact Fee component of the TIF, the Board of Supervisors finds and adopts each of the Mitigation Fee Act findings set forth in Chapter 4 of SANDAG's RTCIP Impact Fee Nexus Report—Final Report dated November 26, 2007. With regard to the remainder of the impact fees included in the TIF program, the Board of Supervisors, consistent with the Mitigation Fee Act, finds and adopts each of the findings set forth in the County of San Diego Transportation Impact Fee Program Update Nexus Study, and further finds that:

(1) Purpose of Fee, Government Code § 66001(a)(1): The further development of property within the County will require the construction of additional transportation facilities in accordance with the ME of the General Plan to mitigate for the impacts of future development on transportation facilities in the unincorporated county. The TIF allows for the cost-effective mitigation of the impact of future development on ME, RAS and State transportation facilities.

(2) Use of Revenues, Government Code § 66001(a)(2): The fees collected by the TIF will be used to fund the expansion of capacity on ME, RAS and State facilities consistent with the ME of the General Plan. These facility improvements are more specifically identified in the County of San Diego Transportation Impact Fee Program Update Nexus Report and County of San Diego TIF Transportation Needs Assessment Report; and may include, roadway widening, roadway extension, traffic signal installation, coordination and other capacity enhancing improvements. TIF shall not be used to address existing deficiencies attributable to prior development.

(3) Benefit Relationship, Government Code § 66001(a)(3): Future commercial, residential and other land development activities will impact ME transportation facilities in the unincorporated county. The TIF program uses Travel Demand Units (TDU's) that account for differing trip generation rates and vehicle miles traveled based on land use type to account for road improvements needed to mitigate for the transportation impacts of different development projects. TIF funds collected are applied on a regional or community basis to ensure road improvements will serve the development project that paid the fees. There is, accordingly, a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Burden Relationship, Government Code § 66001(a)(4): The TIF program uses a TDU formula that takes into consideration trip generation rates and total vehicle miles traveled by land use type. The TDU formula further quantifies and removes pass-by trips that are not attributable to future development. This TDU is then applied to the cost of future improvements needed to mitigate for anticipated development. Facilities costs are adjusted to account for and remove the cost of improvements needed to mitigate for existing deficiencies and resulting from trips originating outside the unincorporated county. In this way, there is a reasonable relationship between the need for the transportation improvements and the project on which the TIF is imposed.

(5) Proportionality, Government Code § 66001(b): There is a reasonable relationship between the amount of the fee and the cost of transportation facilities, or portions thereof, attributable to future development because the TIF is derived from a TDU formula that considers trip generation rates and vehicle miles traveled by land use type to correlate impacts to specific development types. The TIF is collected for local, regional and State facilities components and applied on a regional or community basis. There are three TIF regions in which regional and State facilities funds are expended and twenty-three communities in which local funds are expended. In this way, the TIF is tied to the transportation facilities needed to mitigate for the impacts of future development projects.

(6) Public Welfare: The imposition of TIF on all new development associated with the generation of new traffic within the unincorporated county is necessary in order to protect the public health, safety and welfare by ensuring roads in the unincorporated county continue to operate in accordance with the ME of the General Plan.

SEC. 77.204. DEFINITIONS.

Whenever the following words are used in this Division, they shall have the meaning ascribed to them in this section.

(a) AGRICULTURE means farming, crop production, or raising of poultry or livestock. Agricultural uses in this ordinance do not include residential facilities.

(b) APPLICANT means developer or person seeking a development permit.

(c) BUILDING PERMIT means a permit required by and issued pursuant to the Uniform Building Code.

(d) CALTRANS means the California Department of Transportation.

(e) CONSTRUCTION means design, performance of estimates, environmental assessments and studies, determination of fees, acquisition of right-of-way, administration of construction contracts and actual construction.

(f) COUNTY means the County of San Diego, State of California.

(g) COUNTY HEARING BODY means the County of San Diego, Board of Supervisors, Planning Commission, or any other official, board, or commission designated by the County for decision-making on discretionary actions.

(h) DEVELOPER means the owner or developer of a development seeking a development permit.

(i) DEVELOPMENT PERMIT means any discretionary permit, entitlement, approval for a development project, or any ministerial permit, including building permit, associated with the generation of traffic issued under any ordinance of the County.

(j) DEVELOPMENT PROJECT or DEVELOPMENT means any activity described in California Government Code § 66000 of the Mitigation Fee Act.

(k) DIRECTOR means the County Director of the Department of Public Works, his or her designee, or the Director of such other County department as may be designated by the Board with responsibility for implementing this Division.

(l) FEE means the transportation impact fee established by this Division.

(m) FEE RATE TABLE(s) means the fee rates by category as shown on the tables attached to the County of San Diego Transportation Impact Fee Report Update Nexus Study and any subsequent adjustments thereto made in accordance with the Mitigation Fee Act and this Division.

(n) FURNITURE STORE(S) or COMMERCIAL-FURNITURE STORE means a commercial facility for the sale of moveable articles such as tables, chairs, sofas, desks, or cabinets required for use or ornament in a residence, office, or the like.

(o) GENERAL COMMERCIAL or COMMERCIAL-GENERAL includes but is not limited to shopping centers, strip mall type development and commercial clusters, retail sales facilities including grocery stores and department stores, convenience stores, auto sales and repair facilities, hardware and lumber stores, gardening and nursery stores, eating and drinking establishments including fast food restaurants, and any other retail uses other than Furniture Stores that are not specifically included in other TIF category definitions.

(p) GENERAL INDUSTRIAL or INDUSTRIAL-GENERAL means facilities for manufacturing, processing, assembling, distribution services, laboratories for research and development, construction equipment sales and repair, and any industrial use other than Warehousing and Storage that are not specifically included in other TIF category definitions.

(q) GENERAL PLAN means the San Diego County General Plan as adopted by the Board of Supervisors in August 2011 and any subsequent amendments thereto.

(r) GOVERNMENT/INSTITUTIONAL means and includes government owned and operated facilities such as libraries, police stations, fire stations, prisons or jails, and parks, but also includes public and private Schools and hospitals.

(s) MOBILITY ELEMENT or ME means the Mobility Element set forth as Chapter 4 of the General Plan that identifies the general location and extent of existing and proposed roads, airports, public transit, and other transportation facilities. As used in this Division, ME refers more narrowly to the road, right-of-way facilities identified in the ME of the General Plan.

(t) NON-RESIDENTIAL means development that does not include residential uses.

(u) OFFICE means facilities for administrative or professional services and includes but is not limited to dental offices, medical clinics, insurance sales, banks, savings and loans, and real estate services.

(v) RAS means the Regional Arterial System of roads designated by SANDAG. TIF RAS means RAS roads that are part of the roadway network included in the TIF program.

(w) RAMP means the interchange ramps identified in the County of San Diego Transportation Impact Fee Report Update Nexus Study.

(x) RESIDENTIAL means a land use associated with where a person lives or has a home and includes, without limitation, the following categories:

(1) Single-Family Detached or Single-Family Dwelling means a detached residential structure including without limitation a single manufactured or mobile home on an individual lot typically occupied by a single household or family. Second dwelling units on the same lot are included in this category.

(2) Multi-Family or Multifamily means an attached home, condominium, duplex, apartment, or other attached structure or structures used by more than one family unit. Mobile or manufactured homes not licensed and capable of ready highway use located in a mobile home park, subdivision or other location with at least one other similar structure are a type of Multi-Family residential development.

(3) Non-Permanent means a temporary lodging that is not the primary residence of the occupant, including, without limitation, hotel rooms, time-share units, and facilities for housing agricultural workers.

(4) Congregate Care Facilities or Congregate Care means assisted living communities, congregate care facilities, and other places for persons unable to care for themselves.

(y) RTCIP means the Regional Transportation Congestion Improvement Program established by Section 9 of the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01, approved by San Diego voters.

(z) RTCIP IMPACT FEE means the portion of the TIF imposed on new residential development in accordance with SANDAG's RTCIP Impact Fee Nexus Report—Final Report dated November 26, 2007 to mitigate the impacts of future development on RAS roads.

- (aa) SANDAG means the San Diego Association of Governments.
- (bb) SCHOOLS mean institutions for instruction in a particular skill or field or for providing education and includes, among other things, day-cares, pre-schools, kindergartens, elementary schools, middle schools, high schools, acting or other arts schools, and post secondary colleges and trade schools.
- (cc) SELECT INDUSTRIAL or INDUSTRIAL-SELECT means industrial uses such as quarries, mining operations, concrete and asphalt plants, RV parks and campgrounds, recycling centers, cell phone and other wireless or telecommunication facilities, borrow pit operations, landfills, and other land uses that have minimal buildings but generate significant traffic as determined by the Director.
- (dd) STATE ROUTE means a highway facility owned and operated by Caltrans on behalf of the State of California or any successor agency to Caltrans that the TIF is collecting funds for.
- (ee) TIF means Transportation Impact Fee.
- (ff) TIF AREA(S) or TIF LOCAL AREA means the areas lying within the community boundaries designated on the TIF Facility Location Maps. The TIF Facility Location Maps may be changed or periodically updated by action of the Board of Supervisors.
- (gg) TIF FACILITY LOCATION MAPS means the maps included in the TIF Report showing the TIF Facilities and the boundaries of each community TIF Area.
- (hh) TIF FACILITIES means the road, right-of-way facilities, or portions thereof, including intersections, sidewalks, shoulders, bike lanes and traffic signals, identified in the TIF Report that substantially fulfill the transportation needs identified and represented by a listed facility.
- (ii) TIF REGIONS means the regional boundaries described in the TIF Report for regional TIF for the north, south and east TIF regions.
- (jj) TIF REPORT means the County of San Diego Transportation Impact Fee Update Nexus Study, dated September 2012, and the attachments thereto, including without limitation the County of San Diego TIF Transportation Needs Assessment, dated September 2012 and the Fee Rate Tables. With regard to the RTCIP Impact Fee which is included as a discrete component of the TIF, TIF Report also means SANDAG's RTCIP Impact Fee Nexus Report—Final Report dated November 26, 2007. The TIF Report may be changed or periodically updated by action of the Board of Supervisors pursuant to this Division. The current adopted report is on file with the Clerk of the Board.
- (kk) VILLAGE means the village areas designated on the Regional Categories Map (Figure LU-1) and on the Land Use Maps (Figures LU-A-1 through LU-A-23) in the General Plan.
- (ll) VILLAGE CORE means the hub or center of a Village area designated as village core or village core mixed use in the TIF Report.

(mm) WAREHOUSING AND STORAGE or INDUSTRIAL- STORAGE & WAREHOUSING means all types of warehouses or facilities with the primary purpose being to provide storage space. For the purpose of determining project TIF, Warehousing & Storage includes Agriculture and Wineries.

(nn) WINERY or WINERIES means an establishment for producing wine and may include wine tasting rooms.

SEC. 77.205. TIF AREAS AND REGIONS ESTABLISHED.

TIF Areas for the County are hereby established as twenty-three distinct community areas. Village and Village Core areas are hereby established as subsets of the TIF Areas. The TIF Areas are grouped into three distinct TIF Regions. Said TIF Areas and TIF Regions are depicted in the TIF Report.

SEC. 77.206. PLANNED TRANSPORTATION FACILITIES.

Future development projects will require the construction of identified transportation facilities, or portions thereof as described in the TIF Report. Future development projects within each said TIF Local Area and Region will be benefited by construction of the TIF Facilities proposed. The listed facilities represent future needs and are not proposed projects.

SEC. 77.207. ESTIMATED COSTS.

The total estimated program costs in the amount set forth in the TIF Report shall be established upon the effective date of this Division. This initial, estimated program cost shall be updated annually each July 1 (to coincide with the SANDAG RTCIP Impact Fee annual adjustment) starting July 1, 2013.

SEC. 77.208. LAND USE CATEGORIES.

The TIF is applied to land use categories identified as Categories A-K in the TIF Report as follows: Category A-Residential Single Family Detached, Category B-Multi Family Residential, Category C-Non-Permanent Residential, Category D-Congregate Care Residential, Category E-General Commercial, Category F-Furniture Store, Category G-General Industrial, Category H-Offices, Category I-Warehousing & Storage, Category J-Government/Institutional, and Category K-Select Industrial. The definitions set forth in this Division for different land use categories are intended to be reflective of the land use categories in the TIF Report and shall be deemed to include each of the listed examples of land uses set forth by category in the TIF Report into the respective definition to which they apply.

SEC. 77.209. FEE ESTABLISHED.

Pursuant to the Mitigation Fee Act, the fees set forth in the Fee Rate Tables by land use category attached to the TIF Report are adopted by action of the Board of Supervisors and shall be paid by new development within the TIF Areas and Regions established herein. The RTCIP Impact Fee shall be collected as a discrete component of the TIF. The fees included on the Fee Rate Table shall include an administrative fee of up to three percent (3%) to cover the cost of County administration of the TIF program.

SEC. 77.210. RESIDENTIAL TIF FEES.

TIF for Residential, which includes Single-Family Detached, Multi-Family, Non-Permanent and Congregate Care uses, shall be collected in each TIF Area and Region in the amounts, as adjusted from time to time, set forth in the Fee Rate Tables attached to the TIF Report. Notwithstanding the foregoing, the following residential uses shall be exempt from the RTCIP Impact Fee:

- (a) New moderate, low, very low, and extremely low income residential units as defined in California Health & Safety Code §§ 50079.5, 50105, 50106, and by reference in California Government Code § 65585.1.
- (b) Government buildings, publicly owned buildings, public schools and public facilities.
- (c) Rehabilitated, replacement or reconstructed residential structures, lawfully constructed.
- (d) Guest dwellings.
- (e) Additional residential units located on the same parcel regulated by the provisions of any agricultural zoning.
- (f) Kennels and catteries established in conjunction with an existing residential unit.
- (g) The sanctuary building of a church, mosque, synagogue, or other house of worship.
- (h) Condominium conversions.
- (i) Any other residential structure exempted from the imposition of the RTCIP Impact Fee by the terms of the TransNet Extension Ordinance and Expenditure Plan, SANDAG Ordinance 04-01.

SEC. 77.211. CREDITS FOR RTCIP IMPACT FEE.

Credits, reductions and other offsets for the value of the construction of road improvements shall not be used to reduce the TIF otherwise owed, except for credits required by the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01, to be applied to the RTCIP Impact Fee paid by residential developers. If a residential developer funds or constructs a TIF RAS improvement, the developer shall receive a credit in the form of a reimbursement for the improvement up to, but not exceeding, the cost estimates identified in the TIF Report for the RAS facility. If sufficient cash is available for full reimbursement from the RTCIP fund then the developer shall receive the credit in the form of cash payment. If RTCIP fund levels are insufficient to fully reimburse the developer, a cash reimbursement agreement shall be executed to allow for quarterly payments as RTCIP funds accrue. Developers are required to provide documentation of TIF RAS road construction as a condition of determining and applying a credit. RTCIP Impact Fee credit can only be applied upon completion and acceptance of construction of the TIF RAS road. Developers shall refund any credited amounts paid by the County that are subsequently disallowed by a SANDAG audit.

SEC.77.211.1 DEVELOPER CONSTRUCTION OF TIF RAS FACILITIES

(a) The credit request shall contain a description of the project with a detailed cost estimate that itemizes those allowable costs of the construction attributable to construction of TIF RAS facilities and excludes any work attributable to non-TIF RAS facilities. Estimated cost of the facility will be based on the County's TIF Report. The estimate is programmatic in nature and the amount of the credit shall not exceed that identified in the TIF Report. Additional information shall be provided to the County by the developer upon request of the Director.

(b) The developer is also required to:

- i. Prepare plans and specifications for approval by the Director;
- ii. Secure and dedicate any right-of-way required for the TIF RAS facilities;
- iii. Secure all required permits and environmental clearances necessary for the construction of the TIF RAS facilities;
- iv. Provide performance bonds for 100 percent of the value of the TIF RAS facilities and payment bonds guaranteeing payment of persons entitled to file stop notices or claims of lien with the meaning of Part 6, Titles 1-3, commencing with Section 8000 of the California Civil Code in an amount equal to at least 50 percent of the value of the TIF RAS facilities;
- v. Pay all fees and costs for construction of the TIF RAS facilities.

(c) The County will not be responsible for any of the up-front costs of constructing the TIF RAS facilities. The developer shall advance all necessary funds to construct the facilities. Allowable costs to be applied to the credit for TIF RAS facility improvements include project administration and management, design and engineering, off-site right-of-way acquisition, and construction costs as determined by the Director. On-site right-of-way and on-site environmental mitigation will not be reimbursed.

(d) The developer shall make all reasonable efforts to secure at least three qualified and responsible bids for work to be done and shall award the construction contract to the lowest qualified bidder. In the event three or more qualified and responsible bids cannot be obtained, the developer may still award the construction contract if the Director determines the lowest qualified bid is reasonable. Work on TIF RAS facilities may be included in a contract for other non-TIF RAS work, but must be clearly identified and separately bid. Should the construction contract be awarded to a qualified bidder who did not submit the lowest bid for the TIF RAS portion of the contract, the developer will only receive credit based on the lowest responsible bid received from any other bidders for the TIF RAS portion of the contract.

(e) All bids must be reviewed by the Director prior to contract award.

(f) When all TIF RAS facility improvement work has been completed and all claims of lien or stop notices claims have been finally resolved or the time to file claims of lien and stop notices has expired to the satisfaction of the Director, the developer shall submit verification of payments made for the construction of the facility to the Director. The Director shall make the final determination relative to expenditures that may be eligible for credit through reimbursement. The reimbursement shall not exceed the cost estimates for the RAS facility identified in the TIF Report.

(h) Prevailing Wage is Applicable. Current applicable prevailing wage is required to be paid for construction of all TIF RAS improvements for the improvements to be eligible for credit through reimbursement.

SEC 77.211.2 DEVELOPER TIF RAS/RTCIP REIMBURSEMENT AGREEMENT CASH PAYMENTS.

For developer reimbursement agreements for TIF RAS facility construction as described in Sec. 77.211, the maximum term of any reimbursement agreement shall be twenty-five (25) years or until reimbursements have been issued in full, whichever occurs first. After twenty-five (25) years, the agreement will expire regardless of whether or not sufficient RTCIP Impact Fees have been collected to reimburse all costs. Cash reimbursements for developer reimbursement agreements will be made from available RTCIP Impact Fee funds as follows:

(a) Payments shall be made quarterly within twenty-one (21) days after the end of each calendar quarter from Available TIF RTCIP Revenue.

(b) Definitions for Cash Reimbursement Payments.

i. Available TIF RTCIP Revenue means RTCIP Impact Fees paid into the TIF RTCIP Fund during a calendar quarter plus any accumulated TIF RTCIP revenue remaining from prior to the quarter not already appropriated to a project.

ii. Developer(s) TIF RAS Reimbursement means payment from the TIF RTCIP Fund due and payable to developers pursuant to reimbursement agreements for which reimbursement amounts have been determined prior to or during the calendar quarter.

iii. County TIF RAS Reimbursement means payment from the TIF RTCIP Fund for TIF RAS eligible project costs during a calendar quarter for TIF RAS Facility projects being accomplished by the County.

iv. Quarterly TIF Payments means Developer TIF RAS Reimbursement and County TIF RAS Reimbursement that become due for a calendar quarter (January 1 to March 31, etc.).

(c) Proportionality of Cash Reimbursements to Developer(s) and to the County.

i. If eligible Developers or County TIF RAS Reimbursements are both equal to or less than 50% of the quarter's Available TIF RTCIP Revenue, developers and County shall each be fully reimbursed.

ii. If both Developers and County have eligible TIF RTCIP Reimbursements that exceed 50% of a quarter's Available TIF RTCIP Revenue, then 50% of the available revenue shall be allocated to developers and 50% to County.

iii. If either Developers or County have eligible TIF RTCIP Reimbursements that are up to 50% of the quarter's available TIF RTCIP revenue and the other has eligible TIF RTCIP Reimbursements that exceed 50% of the quarter's available TIF RTCIP revenue, the one having up to 50% shall receive full reimbursement and the other shall receive up to the amount due from all remaining available TIF RTCIP revenue regardless of whether it exceeds 50%.

(d) Proportionality of Quarterly TIF Payments for Reimbursement of Available TIF RTCIP Revenue among multiple developer reimbursement agreements:

In those instances where the sum of the amount owed to all developers exceeds a quarter's available TIF RTCIP revenue allocated to reimburse developers, Quarterly TIF payments shall be made based on the ratio of each developer's initial reimbursement amount to the total of all developers initial reimbursement amounts for which payments are due for the quarter.

The following is an example of the allocation methodology: if there are two developer agreements eligible for TIF RTCIP Reimbursements plus the County from the TIF RTCIP fund for a particular quarter:

The current available TIF RTCIP revenue for the quarter is assumed to be \$200,000. Assume the County is entitled to \$100,000 dollar reimbursement; the County would be eligible for 50% of the existing fund balance which equates to \$100,000. The remaining 50% of \$100,000 would be available to reimburse Developers A and B.

If the initial reimbursement amounts for Developers A and B and are \$200,000 and \$300,000 respectively, the remaining 50% of the quarter's Available TIF RTCIP Revenue (\$100,000) shall be allocated between the developers as follows:

Developer A is owed \$200,000 and Developer B is owed \$300,000 or 40% and 60% of a total \$500,000 owed reimbursement. Of the remaining \$100,000 in TIF RTCIP funds for the quarter, Developer A receives a 40% reimbursement of \$40,000 in TIF RTCIP funds and Developer B receives a 60% reimbursement or \$60,000 in TIF RTCIP funds.

SEC. 77.212. NON-RESIDENTIAL TIF FEES.

TIF for Non-Residential uses, which includes General Commercial, Furniture Stores, General Industrial, Offices, Warehousing & Storage, Government/Institutional, and Select Industrial, shall be collected in each TIF Area and Region in the amounts, as adjusted from time to time, set forth in the Fee Rate Tables attached to the TIF Report.

SEC. 77.213. FEE ADJUSTMENT TO REFLECT ALTERNATIVE MITIGATION (OPT OUT).

The TIF is imposed to provide a means for developers to mitigate for project cumulative traffic impacts on ME facilities. Developers may elect to mitigate for these impacts by constructing physical improvements to off-site ME facilities in lieu of paying the TIF (Opt Out). With the exception of RTCIP Impact Fees for residential projects which are to only be adjusted using credits in the manner established by Sections 77.211-77.211.2, developers seeking adjustment to the TIF to reflect the construction of off-site road improvements must demonstrate to the Director that all local and regional cumulative traffic impacts were identified through a cumulative traffic study and fully mitigated through physical improvements.

SEC. 77.214. PAYMENT OF FEES.

(a) The fees required pursuant to this Division shall be paid to the County as a condition of approval of a development permit, including a building permit. For development projects that require both discretionary and building permits, the fees shall be paid no later than time of building permit issuance. If the fee is paid prior to the time of building permit issuance and the amount of the fee increases, the additional fee amount must be paid before the building permit is issued. If the fee is paid prior to time of building permit issuance and the amount of the fee is reduced, then at the time the building permit is issued, a refund for the overpayment amount will be provided to the applicant. Once a building permit is issued, the amount of the fee is set and will not be adjusted by subsequent increases or decreases to the TIF rates. In the case of discretionary permits that will not involve a building permit but which will generate additional traffic, payment of the fee shall be recommended as a condition of permitting to the decision-making body that would approve such permit.

(b) Notwithstanding subsection (a) above, the payment of TIF and RTCIP fees in connection with residential tracts and commercial building permits may be deferred and paid prior to or at the time of scheduling a final building inspection, if the applicant executes an agreement with the County for a fee deferral in a manner consistent with the requirements of Government Code § 66007. For commercial projects, the agreement must be executed prior to June 30, 2013. The deferral of TIF for commercial projects will not be allowed after June 30, 2013.

(c) Projects in process that have building permits issued after October 31, 2012, are eligible to receive a TIF refund for the difference between higher TIF previously paid and the lower TIF established by this ordinance. Refunds shall be automatically processed to customers who receive building permits after October 31, 2012 but before the new rates are in effect.

(d) As identified in the TIF Report, Village and Village Cores shall receive a TIF discount. The reductions are ten percent (10%) of the otherwise due TIF for Village areas and twenty percent (20%) of the TIF otherwise due for Village Cores. The Village and Village Core discount shall not apply to the RTCIP Impact Fee.

SEC. 77.215. STATE ROUTE AND RAMP FUNDING AND REIMBURSEMENT AGREEMENTS.

The State Route and Ramp fund collects for State Routes and Ramps identified in the TIF Report. Reimbursement or funding agreements shall be executed between the County and Caltrans, and SANDAG, if necessary, to allocate these funds when available towards Caltrans or SANDAG projects to enhance capacity on these facilities. If sufficient cash is available for full reimbursement from the State Route and Ramp account then Caltrans and SANDAG shall receive the cash payment. If State Route and Ramp account levels are insufficient to fully reimburse Caltrans or SANDAG, a reimbursement agreement shall be executed to allow for quarterly payments as State Route and Ramps funds accrue. The amount and timing of the reimbursements or funding allocations shall be specified in the agreements. Reimbursements and funding allocations from State Route and Ramp funds shall never exceed the estimated costs per facility as identified in the TIF Report.

SEC. 77.216. ADJUSTMENT OF FEES.

The fees established by this Division have been established based on estimated costs to construct TIF Facilities. The RTCIP Impact Fee shall be adjusted annually on July 1st of each year in accordance with the construction cost index adjustment made by SANDAG in accordance with the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01. Annual adjustments to the RTCIP Impact Fee made by SANDAG in accordance with the TransNet Ordinance and Expenditure Plan shall be automatic and shall not require further action by the Board of Supervisors. The remaining portions of the TIF fee shall be adjusted based on the following criteria:

(a) On July 1st of each year, by the annual increase applied by SANDAG to the RTCIP Impact Fee, or an increase of 2.0%, whichever is more. Annual adjustments to the fee made in accordance with this provision shall be automatic and shall not require further action of the Board of Supervisors.

(b) Changes in the type, size, location or cost of the transportation facilities (if any) to be financed by the fee, changes in land use designations in the General Plan, and upon other sound engineering, financing and planning information. Adjustments to the fees resulting from the above reviews may be made by resolution amending the Fee Rate Tables contained in the TIF Report and subject to the notice and public meeting requirements of Government Code § 66016.

(c) The Board of Supervisors may reduce the fee by up to 50% for a specific project if it determines there are public financial benefits that warrant such a reduction, and funding to replace the excused fee amounts is committed as part of such action.

SEC. 77.217. ESTABLISHMENT OF FUNDS AND USE OF FEES.

Fees collected hereunder, shall be segregated into a TIF Facilities Fund with a separately identified TIF State Route and Ramp Account included as part of the fund and the TIF RTCIP Fund. Each TIF fund shall be placed in an interest-bearing account.

(a) TIF RTCIP Fund. RTCIP Impact Fees shall be placed in the TIF RTCIP Fund and shall be accounted for on a County-wide basis. The TIF RTCIP Funds shall be expended solely for the construction or reimbursement for construction of TIF RAS Facilities.

(b) TIF Facilities Fund. All other TIF fees, excluding funds placed in the TIF RTCIP Fund and TIF State Route and Ramp Account, shall be segregated into separate accounts by TIF Area and Region to separately account for TIF paid for local and regional TIF Facilities. TIF Area funds shall be expended solely for the construction or reimbursement for construction of local TIF Facilities within the TIF Area from which the fees comprising the fund were collected. Fees collected hereunder by TIF Region shall be expended solely for the construction or reimbursement for construction of TIF Facilities within the TIF Region from which the fees comprising the fund were collected. These fees may also be used to reimburse the County for TIF Facilities constructed by the County with funds from other sources. TIF Facilities and funds shall be identified in a Department of Public Works Detailed Work Program, which includes capital improvements and other transportation related expenditures. The TIF Facilities within the Detailed Work Program (DWP-TIF) will be presented for Board approval as part of the annual budget approval process or in stand-alone Board letters. TIF Facilities funds within the DWP-TIF will not be co-mingled with other project funds to ensure that revenues and expenditures are solely and exclusively used for TIF Facility construction. However, these funds may be augmented by other sources, if available, in order to complete TIF Facility projects. For North TIF Regional funds, there is an existing reimbursement agreement between the County and Granite Construction Company, and the terms of that agreement will remain in full effect and will be used to continue to reimburse Granite Construction each quarter.

(c) TIF State Route and Ramp Account. Fees collected for the State Route and Ramps portion of the TIF shall be segregated into a TIF State Route and Ramp Account within the TIF Facilities Fund. TIF State Route and Ramp funds shall be expended solely for the construction of State facilities within the TIF Region from which the fees comprising the fund were collected.

Expenditure for interim improvements that provide incremental progress and measurable benefits, such as increased capacity or traffic flow, will be allowed. These interim improvements will be consistent with the long-term objectives of full TIF Facility construction as determined by the Director. When recommended by the Director, interim improvements will be identified in the DWP-TIF or in stand-alone Board letters and expenditures from the applicable TIF funds will be authorized commensurate with DWP-TIF approval. In selecting which specific road improvements shall be recommended, priority shall be given to those roads that serve projects that have paid impact fees.

When DPW Capital Improvements Program (CIP) is requesting use of funds for a specific project, the Department shall allocate those funds out of the applicable TIF fund so as to be available before the docket date of the necessary approving Board letter. Such funds held for the CIP project shall not be eligible for reimbursement by agreement in accordance with this Division. If sufficient cash is available for full reimbursement from the TIF fund or account then DPW CIP shall receive cash payment. If funds available in the TIF fund or account are insufficient to fully reimburse the DPW CIP project, reimbursements shall be made in quarterly payments as TIF funds accrue.

SEC. 77.218. APPLICABILITY.

This Division shall apply to all development permits, including building permits, associated with the generation of traffic through new construction or expansion of an existing facility that add square footage space to a facility, as determined by the County. With the exception of the RTCIP Impact Fee which shall be collected for all residential development projects except as exempted by Section 77.210, the TIF shall not be collected for the following development activities:

- (a) Alterations, improvements, or additions to an existing residential dwelling, or rebuilding of a destroyed residential dwelling that does not change its classification of occupancy.
- (b) Apartment to condominium conversions.
- (c) Interim or temporary use permits of three years or less.
- (d) Permitted home businesses such as child day care in a residential unit and other business uses allowed within a residence.
- (e) Tenant improvements to existing non-residential facilities including changes of occupancy or changes in use for an existing facility.
- (f) Minor expansions to existing non-residential facilities. Minor expansions for purposes of this ordinance refer to expansions that increase the total floor space of a facility by no more than 1,000 square feet. Expansions of greater than 1,000 square feet would require payment of TIF for all additional floor space beyond the initial 1,000 square foot expansion. For example, an existing facility that expands from 10,000 square feet to 20,000 square feet would have a TIF obligation based on 9,000 square feet. To prohibit incremental expansions to avoid payment of the TIF, any prior expansions over the preceding five years will be considered part of the current expansion.
- (g) Rebuilding of a destroyed non-residential facility that does not increase floor space greater than 1,000 square feet. Expansions of greater than 1,000 square feet would require payment of TIF for all additional floor space beyond the initial 1,000 square foot expansion.
- (h) Uncovered outdoor areas for tables or seating for a café or restaurant that do not require a building permit.
- (i) Accessory buildings such as non-commercial garages, barns, sea containers, workshops and sheds at residences, and non-residential agricultural buildings (agricultural labor dwellings are not exempt).
- (j) Signs, water tanks, propane tanks, other liquid tanks, wells, or similar structures.
- (k) Permitting of un-permitted structures (residential or non-residential) constructed prior to September 2005.
- (l) Projects with TIF payment obligations of less than \$25.

This Division shall not exempt any new development except as provided for in this Division, as required by state or federal law, or in the case of the RTCIP Impact Fee the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance 04-01. In cases where a development is specifically exempt from this Division, but said development has cumulative transportation impacts required to be mitigated as a condition of project approval, the County can accept TIF payment for mitigation purposes.

SEC. 77.219. APPEAL.

Notwithstanding any other provision of this Division, the applicant as defined in this Division shall, as a part of the development permit process, have the right to present evidence to the Director to demonstrate that the fee calculation or amount of TIF is incorrect or inequitable as applied in such case. In certain cases, assumptions that are built into the program may not apply equitably to a particular land use. In order to address these potential inequities, it is necessary to have a process for appeal. The applicant shall have the burden of demonstrating any inaccuracy or inequity by serving on the Director engineering studies and cost estimates necessary to support the applicant's contentions.

If the applicant is processing an application for which the TIF is a condition of approval, the studies and cost estimates must be served on the Director no later than sixty (60) days prior to approval of the project. The Director shall then make a recommendation regarding fee adjustment to the County hearing body. Upon review of the Director's recommendation, the hearing body shall have the authority to change the amount of fee when it finds the amount so established is incorrect or inequitable in the specific case. The decision of the County's hearing body shall be final, and any additional appeals shall be in accordance with the County subdivision ordinance or zoning ordinance, whichever applies to the application being processed.

If the applicant is seeking a ministerial permit, the appeal, required engineering studies and cost estimates can be served on the Director any time prior to development permit issuance. The Director shall review the requested fee adjustment and shall have the authority to change the amount of fee when it finds the amount so established is incorrect or inequitable in the specific case. The decision of the Director shall be final.

SEC. 77.220. WAIVER.

A development which is designed and intended as a temporary use (3 years or less) and which is conducted in facilities which are, by their nature, short-term interim facilities such as a portable or modular buildings (including mobile homes, trailers and other residential facilities of ready highway use or relocation not located in an established mobile home park, subdivision, or other non-temporary residential development) may apply to the Director for a TIF fee waiver. The Director shall have the authority to grant such waivers. No waivers shall be granted for the RTCIP Impact Fee. If the temporary use extends beyond three (3) years, the TIF fee must be paid as if the use is a permanent use based on the TIF fee effective at the beginning of the third year.

SEC. 77.221. EXEMPT PRIOR PROJECTS.

Developers may elect to construct TIF Facility improvements rather than pay the TIF. Projects for which developers have elected to construct improvements of sufficient size and scale to mitigate both direct and cumulative impacts, but for which permits that would otherwise trigger the payment of TIF are outstanding, shall be exempt from the payment of TIF. The following projects are exempt from the payment of TIF as a result of the construction of facilities by the developer:

4S Ranch (Areas covered by the Public Benefit Agreement (DA 99-001) dated December 6, 2000),
Pepper Tree Park (SP87-007), and
Alpine Village Center (SP99-047).

SEC. 77.222. REFUND OF FEES.

If a building permit or development permit expires, is cancelled, or is voided and if any fees paid pursuant to this Division have not been expended and no construction has taken place pursuant to such building permit or development permit, the Director shall, upon written request, refund the fee and any interest, if earned, on the fee, to the record property owner or his or her representative.

SEC. 77.223. EXPIRATION.

This Division shall be of no further force when the County determines that the amount of fees which have been collected is sufficient to complete the ME improvements identified in the TIF Report, as subsequently amended or modified, to fully mitigate for the transportation impacts of future development. The RTCIP Impact Fee shall expire upon the termination or modification of the TransNet Ordinance and Expenditure Plan, SANDAG Ordinance No. 04-01, in a manner that eliminates the requirement to have a local funding program for residential development impacts on TIF RAS facilities.

Section 3: This Ordinance shall take effect and be in force sixty (60) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 31st day of October, 2012.